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July 26, 1999

**BY COURIER**

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JUL 26 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: CC Docket No. 98-141**

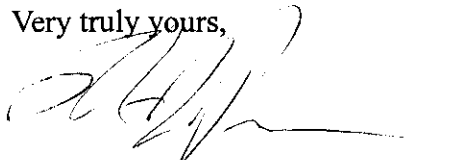
Dear Ms. Salas:

On behalf of CTC Communications Corp., enclosed for filing is an original and eight copies of its Reply Comments in the above-referenced docket.

Also enclosed is an extra copy of these Comments. Please date stamp the copy and return it via my courier.

If you have any questions, please contact me.

Very truly yours,



Morton J. Posner

Counsel for CTC Communications Corp.

cc(w/encl.): Janice Myles  
ITS  
Jordan Michael, Esq.  
cc(w/o encl.): Eric J. Branfman, Esq.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

DOCKET FILE COPY ORIGINAL

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JUL 26 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Applications for Consent to the Transfer )  
of Control of Licenses and Section 214 )  
Authorizations from )  
)  
Ameritech Corporation, Transferor, to )  
)  
SBC Communications, Inc., Transferee )

CC Docket No. 98-141

**REPLY COMMENTS OF CTC COMMUNICATIONS CORP.**

CTC Communications Corp. ("CTC"), by counsel, hereby files its Reply Comments on the conditions proposed by SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech") for their pending application to transfer control ("merger conditions"). Before SBC is permitted to complete its *next* merger, the Commission should compel SBC to honor promises it made in connection with its *previous* Southern New England Telephone ("SNET") merger, and those promises should be extended and implemented throughout SBC's proposed *new* Ameritech service area on the same schedule. SBC's eligibility to hold its *current* Commission authorizations, as well as those of Ameritech that it *proposes* to control, is dependent upon adherence to *prior* merger conditions and the market-opening provisions of the Act. SBC has failed the Commission's public interest test relative to both its previous merger with SNET and proposed merger with Ameritech.

**I. MERGER CONDITIONS AND MARKET OPENING MEASURES SHOULD BE IMPLEMENTED SIMULTANEOUSLY THROUGHOUT SBC'S SERVICE TERRITORY, INCLUDING CONNECTICUT**

As CTC discussed in its opening Comments, the merger conditions must be strengthened in two important ways to protect the public interest. First, they must be augmented to require SBC to abide by final administrative decisions based on the Act throughout its region, including Connecticut. Second, they must require SBC to implement the conditions in Connecticut at the same time as in other states. *CTC Comments* at 6-8. Implementation of market opening measures in connection with an SBC merger is not a new concept for Connecticut. As part of the SBC/SNET merger, SBC assured the FCC that it would apply market opening measures in Connecticut.<sup>1/</sup> In addition, the FCC noted allegations of SBC anti-competitive conduct in Texas and said that it expected that SBC conduct would not be repeated elsewhere.<sup>2/</sup> Unfortunately, SBC has indeed exported anti-competitive conduct to other states, particularly Connecticut, and has failed to implement promised market opening measures in that state. SBC's policies in Connecticut implicate the Commission's standard on fraudulent representations to a governmental unit as well as antitrust violations insulating local markets from competition. Given SBC's record, its future compliance with the proposed merger conditions is worrisome unless they are significantly strengthened.

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<sup>1/</sup> See *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telephone Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, *Memorandum Opinion and Order*, FCC 98-276, 13 FCC Rcd 21292, at ¶¶ 32, 44, 51 (1998) ("SBC/SNET Order").

<sup>2/</sup> *Id.* at ¶¶ 26-27.

Although SBC was ordered by the Texas Public Utilities Commission to cease imposing termination penalties on customers seeking to convert their existing service arrangement to a reseller, SBC affiliates continue to impose such termination penalties on its customers in Connecticut and other states in its service territory. As discussed in CTC's Comments, state commissions have unanimously ruled against these "switching" penalties in the resale context including most recently the Rhode Island Commission. *CTC Comments* at 6. Nonetheless, SBC continues to force CTC and other resellers to expend limited resources litigating this issue over and over again before state commissions. *CTC Comments* at 4-6. This SBC conduct is directly contrary to opening Connecticut and other markets to local competition.

Not surprisingly, SBC has demonstrated a pattern of exporting anti-competitive conduct to other states. After SBC acquired Pacific Telesis ("PacTel") in April 1997, the California Public Utilities Commission ("CPUC") cited several examples of anti-competitive conduct by PacTel.<sup>3/</sup> The Texas Public Utility Commission previously cited SBC for similar infractions.<sup>4/</sup> In

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<sup>3/</sup> See, e.g., *California Public Utilities Commission Telecommunications Division, Initial Staff Report, Pacific Bell (U 1001C) and Pacific Bell Communications Notice of Intent To File Section 271 Application for InterLATA Authority in California*, at 26 (July 10, 1998) (misuse of customer proprietary network information ("CPNI") to maintain or win back customers that had chosen to switch carriers); *id.* at 37 (deficiencies in Pacific Bell's provision (or more accurately, failure to provision) collocation space to its competitors); *id.* at 29-30 (failure to provide competitors with adequate access to Pacific Bell's Operations Support Systems); *id.* at 41 (refusal to comply with its obligations under Section 252(I) of the Act).

<sup>4/</sup> See, e.g., *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Project No. 16251, *Commission Recommendation*, at 3 (ordering SWBT not to use CPNI to win back customers lost to competitors); *id.* at 9 (directing SWBT to establish performance measures for the number of days required to complete physical collocation facilities); *id.* at 13 (ordering SWBT to either improve the preordering interfaces available to CLECs or show that CLECs have access to customer records at parity with the access SWBT enjoys); *id.* at 2 (directing SWBT to "establish that its interconnection agreements

addition, following SBC's acquisition of PacTel, numerous complaints were filed relating to its business practices and customer service policies. Increased consumer complaints were noted by the CPUC,<sup>5/</sup> California consumer groups,<sup>6/</sup> and PacTel's own employees.<sup>7/</sup>

In short, in spite of its assurances to this Commission to the contrary and in spite of repeated state commission directives to implement market opening measures, SBC failed to institute such measures throughout its service area. If, as SBC's President of Special Markets Stephen M. Carter has stated, "there is no reason to expect [SBC's record in opening its networks] will be any different with Ameritech," the Commission should not approve the merger as proposed at all. *See Affidavit of Mr. Stephen M. Carter in Support of SBC-Ameritech Merger* at 15.

SBC's continued failure to implement market opening measures throughout its service territory - and in particular its obstinacy relative to unwarranted switching penalties - demonstrates that SBC lacks the "citizenship, character, financial, technical and other qualifications" required for the commission's approval of the proposed merger. Such a showing are binding and are available on a nondiscriminatory basis to all CLECs.")

<sup>5/</sup> See, e.g., *Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards For All Telecommunications Carriers and Revisions to General Order 133-B*, R.98-06-029 (Cal. PUC, June 18, 1998) (noting that customer complaints about deteriorating telephone service proliferated following the SBC-PacTel merger).

<sup>6/</sup> See, e.g., *The Utility Consumers's Action Network v. Pacific Bell (U-1001-C)*, C. 98-04-004 (Cal. PUC, filed June 2, 1998) (citing Pacific Bell's allegedly deceptive and misleading marketing campaigns for Caller ID and related services).

<sup>7/</sup> See, e.g., *Telecommunications International Union, International Federation of Professional and Technical Engineers, AFL-CIO v. Pacific Bell and SBC*, Docket No. C. 98-06-049, filed June 18, 1998 with the California Public Utilities Commission (alleging that SBC had implemented a sales policy emphasizing sales over service and customer satisfaction).

is an integral part of the Commission's public interest analysis under Section 310(d) to approve the transfer of control. *See SBC/SNET Order* at ¶ 26. Specifically, SBC's record demonstrates violations of "laws protecting competition." *See id.* at ¶¶ 26-27. In order to ensure that SBC complies with its most recent set of proposed merger conditions, the Commission should adopt CTC's suggestion that SBC abide by final administrative decisions based on the Act throughout its region. *CTC Comments* at 7. Otherwise, SBC will continue to violate the market opening provisions of the Act until CTC and other competitors bring wasteful and duplicative enforcement actions throughout its region. CTC respectfully requests that the Commission assert its jurisdiction and bring an end to these anticompetitive switching penalties once and for all.

## **II. SBC AND ITS AFFILIATES SHOULD BE REQUIRED TO ALLOW LOCAL TELECOMMUNICATIONS RESALE WITHOUT ASSESSING TERMINATION PENALTIES**

As noted in the Comments of Ntegrity Teleconnect Services, Inc. ("Ntegrity"), "market opening conditions in a region should facilitate rapid competitive entry, eliminate any unreasonable start-up costs that the applicants could impose on new competitors and minimize the applicants' ability to increase competitors' direct and indirect long-term operating costs." *See Ntegrity Comments* at 7-8 (quoting Thomas Krattenmaker of the FCC's Office of Plans and Policy). SBC's imposition of unreasonable and illegal switching penalties create a severe restraint on competition. In particular, the proposed merger conditions must include a requirement that SBC and its corporate affiliates cease imposing termination penalties on customers seeking to avail themselves of the services of resellers.

In spite of numerous orders to the contrary, SBC and other ILECs continue to unlawfully impose termination penalties on customers merely seeking to convert their existing contract

service arrangements to resellers. As discussed in CTC's Comments, all commissions considering the matter ruled that imposing termination penalties on resold services constitutes an unreasonable or discriminatory condition or limitation on the resale of such telecommunications service in violation of the Telecommunications Act. In order to ensure that SBC and its affiliates do not import such recalcitrant practices to the Ameritech regions, as SBC has permitted in its SNET region, the Commission should include a provision in the merger conditions requiring that SBC and its affiliates permit customers to avail themselves of the services of resellers without incurring unwarranted switching penalties. Such a measure will "facilitate rapid competitive entry" by reducing unreasonable start-up and long-term operating costs associated with entry into local telecommunications marketplaces dominated by SBC and its corporate affiliates.

### **III. CONCLUSION**

Despite a poor record of complying with the market opening provisions of the Act, SBC proposes to further delay local competition in Connecticut and beyond to the Ameritech regions. The Commission should modify the proposed merger conditions to include the prohibition of termination penalties when local service is switched to a reseller. Without such protections, SBC will once again misrepresent its conduct, as it has as much as promised, but failed in a market-opening experiment in Connecticut. *SBC/SNET Order at ¶ 32*. There are significant allegations that should lead the Commission "to be concerned that the proposed merger would inhibit or delay the development of competition in market" currently served by Ameritech. *SBC/SNET Order at ¶ 31*. Clearly, it is time for SBC to honor its promises to this Commission, and to honor state commission orders without need for duplicative enforcement actions in all of SBC's states.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EJ Branfman', with a horizontal line extending to the right.

---

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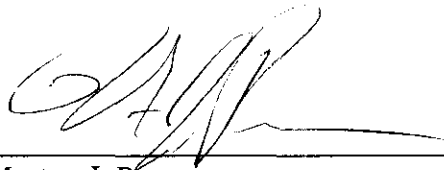
Counsel for CTC Communications Corp.

Dated: July 26, 1999



**CERTIFICATE OF SERVICE**

I, Morton J. Posner, hereby certify that on this 26th day of July 1999, copies of the foregoing Reply Comments of CTC Communications Corp. in CC Docket No. 98-141 were sent via first class U.S. mail to the parties on the attached list.



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